

154. Defendant Novak routinely ignored warning systems in the Willowbrook facilities indicating the presence of unsafe levels of EtO. When Mr. Novak received employee complaints regarding such warning systems, he ignored them and instructed employees to ignore them as well. Mr. Novak permitted and/or directed chamber doors, aeration doors, and exterior doors in the Willowbrook facilities to remain open allowing uncontrolled EtO emissions into the environment. Mr. Novak also approved of inaccurate EtO monitoring and testing results, effectively hiding the actual EtO emissions within the facilities and into the environment and ensuring that the facilities would continue to operate in dangerous fashion.

155. In addition, Defendant Roger Clark recalibrated EtO monitoring systems at the Willowbrook facilities to permit increased tolerance of EtO. As a result, Mr. Clark caused and/or permitted consistently elevated levels of EtO in the facilities. Mr. Clark did this knowing that doors within the facilities as well as exterior doors were routinely left open and thereby caused or permitted uncontrolled EtO emissions into the environment.

156. Mr. Clark and Mr. Novak also routinely participated in and/or directed the operation of all chamber sterilization units in the facilities at the same time, which they knew or reasonably should have known would overload emissions control systems. As a result, both Mr. Clark and Mr. Novak caused excessive uncontrolled EtO emissions into the environment.

157. Mr. Clark and Mr. Novak also bore responsibility for monitoring, maintenance, and replacement of emissions systems equipment. They routinely failed to replace emissions system equipment, including filters, such that they caused excessive levels of EtO emissions into the environment.

158. Taken together, these facts demonstrate a pattern of Defendants consistently failing to implement company-wide safety measures across all their facilities despite research, NIOSH bulletins, regulatory interventions, and problematic incidents demonstrating their need. This willingness to “cut corners” and lack of oversight may explain why Defendants failed for decades to install available emission control technology to limit emissions of EtO from their Willowbrook facilities.

### **VIII. EtO’s Human Impact**

159. EtO is a highly potent human carcinogen relative even to other carcinogens. For example, chronically inhaled EtO is 385 times more potent a carcinogen in comparison with benzene (pound for pound), and 231 times more potent in comparison with formaldehyde.<sup>14</sup> In terms of excess cancer risk effect, 6,000 pounds per year of EtO air emissions are roughly as harmful to humans as 2,300,000 pounds of benzene or 1,380,000 pounds of formaldehyde.

160. The Willowbrook area has an extremely high cancer risk relative to other parts of the country. U.S. EPA’s 2014 update to the National Air Toxics Assessment documented cancer risks in 76,727 census tracts across the country. Of these, 106 had cancer risk scores above U.S. EPA’s acceptable limits. The area surrounding the Willowbrook facilities was among those tracts. Most of the remaining 106 tracts were located in “Cancer Alley” (the notoriously polluted, highly industrial area along the Mississippi River between Baton Rouge and New Orleans).

161. Figure 2 lists the top 19 tracts, which also include the Willowbrook area tract—Tract No. 17043845902.

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<sup>14</sup> <https://www.epa.gov/sites/production/files/2014-05/documents/table1.pdf>

Figure 2

	A	B	C	D	E	F	G
	State	EPA Region	County	FIPS	Tract	Population	Total Cancer Risk (per million)
1							
2	LA	EPA Region 6	St. John the Baptist	22095	22095070800	2,537	1,505.1167
3	LA	EPA Region 6	St. Charles	22089	22089060100	1,937	808.7227
4	LA	EPA Region 6	St. John the Baptist	22095	22095070900	3,115	616.6193
5	PA	EPA Region 3	Lehigh	42077	42077005902	1,571	596.4609
6	CO	EPA Region 8	Jefferson	08059	08059010902	2,310	525.5596
7	LA	EPA Region 6	St. John the Baptist	22095	22095070700	4,348	511.3240
8	LA	EPA Region 6	St. John the Baptist	22095	22095071000	2,840	490.2785
9	LA	EPA Region 6	St. John the Baptist	22095	22095000000	45,924	413.3152
10	WV	EPA Region 3	Kanawha	54039	54039013400	2,222	366.6597
11	LA	EPA Region 6	St. John the Baptist	22095	22095071100	3,398	363.1912
12	TX	EPA Region 6	Harris	48201	48201343100	4,629	348.2016
13	PA	EPA Region 3	Lehigh	42077	42077000101	3,661	346.5181
14	LA	EPA Region 6	St. John the Baptist	22095	22095070500	6,229	329.2657
15	LA	EPA Region 6	St. John the Baptist	22095	22095070100	2,685	303.0079
16	LA	EPA Region 6	St. John the Baptist	22095	22095070300	6,258	296.3112
17	TX	EPA Region 6	Harris	48201	48201343200	4,944	296.1831
18	LA	EPA Region 6	St. John the Baptist	22095	22095070400	4,381	286.5417
19	LA	EPA Region 6	St. Charles	22089	22089062700	4,753	284.5145
20	IL	EPA Region 5	DuPage	17043	17043845902	3,411	281.8075

Twelve of these top 19 tracts are located in Cancer Alley. Another five, like the Willowbrook area tract, have sterilization facilities that emitted massive amounts of EtO. The Assessment shows that sterilization facilities were responsible for the extraordinarily high cancer risks reported for three of the top 19: DuPage County, Illinois, Jefferson County, Colorado, and Lehigh County, Pennsylvania.

162. For the Willowbrook area tract, the U.S. EPA assessment found a cancer risk of 281.8075 in 1 million—nearly three times higher than U.S. EPA’s acceptable upper limit and the highest in Illinois. The Willowbrook area tract is in the top 99.98% tracts in terms of cancer risk in the country.

163. The U.S. EPA assessment attributed 88.98% of the elevated cancer risk to EtO emissions. Thus, the Willowbrook facilities—the sole emitter of EtO anywhere in the

Willowbrook area tract—were almost entirely responsible for the Willowbrook area tract having the 19th highest cancer risk in the country.

164. Later data revealed an even higher risk. The August 2018 ATSDR report, based on air measurements collected from 29 discrete locations around the Willowbrook facilities, concluded that the facilities' emissions were exposing Willowbrook-area residents and workers to elevated airborne EtO concentrations, and that these concentrations created a cancer risk of 6,400 in 1 million (or 64 in 10 thousand)—64 times the U.S. EPA acceptable limit of just 1 in 10 thousand.<sup>15</sup> The report also concluded that these elevated risks created a public health hazard and called for Sterigenics to reduce emissions immediately.

165. According to U.S. EPA, each year of exposure to EtO creates even higher cancer risk for children than it does for adults because EtO can damage DNA and children have more years ahead of them to develop other cancer risk factors that lead to the formation of malignant cells.<sup>16</sup> Children are also at greater risk than adults because children receive larger doses per body weight compared to adults, so they have greater lung surface area and increased lung volume per body weight and they inhale in more air per body weight.

166. According to U.S. Census data, 3,494 children ages five and under lived within three miles of the facilities in 2010, including 250 children who lived within one mile of the facilities.

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<sup>15</sup> <https://www.epa.gov/national-air-toxics-assessment/nata-frequent-questions>

<sup>16</sup> <https://www.epa.gov/hazardous-air-pollutants-ethylene-oxide/frequent-questions-ethylene-oxide>

167. Neither the volume of the facilities' EtO emissions nor their impact on Willowbrook-area residents and workers was made known to the general public until the release of the ATSDR report on August 21, 2018.

168. In February 2019, IEPA issued a seal order against Sterigenics U.S. "to prevent the commencement of any new sterilization cycles using EtO until measures are in place to prevent emissions of EtO . . . which present a public health hazard to residents and off-site workers . . . in the Willowbrook community."

#### **IX. Sterigenics Under GTCR's Control and Leadership**

169. GTCR knew of the inherently dangerous nature of the EtO sterilization business: that this danger was driving medical companies to outsource sterilization to firms like Sterigenics is what made Sterigenics attractive for investment.

170. Indeed, GTCR knew, from its pre-acquisition due diligence of the Sterigenics purchase, about of the risks and dangers posed by EtO.

171. GTCR also knew that medical companies were beginning to outsource sterilization to firms like Sterigenics in order to avoid the risks of injury and potential for liability EtO posed; and this trend is what made Sterigenics an attractive target for investment to GTCR.

172. All of this — the inherent risk, the danger, and the outsourcing trend — was publicly available as early as 1998 (well before GTCR's 2011 acquisition of Sterigenics), when Sterigenics U.S. and Sotera's predecessors, Griffith and Sterigenics International disclosed it in prospectuses they filed with the United States Securities and Exchange Commission in anticipation of issuing publicly traded securities.

173. The Griffith prospectus warned that “[e]thylene oxide is a toxic and hazardous chemical which is flammable and explosive. It has been identified as a cancer and reproductive hazard” and that “[t]he cancer and reproductive hazards associated with exposure to ethylene oxide subject the Company to the risk of liability claims being made against it by workers and others who are exposed to ethylene oxide.”<sup>17</sup>

174. Both prospectuses expressly identified the dangers, potential liabilities and new government regulations concerning EtO as catalysts for a sterilization outsourcing trend that was increasing demand for services from medical sterilization contractors like Sterigenics.

175. The Sterigenics International prospectus stated that “[b]eginning in the 1970’s, several governmental limitations were placed on gas fumigation due to the discovery that EtO was a mutagenic substance with possible carcinogenic properties...” and that “increased costs” and “exposure” concerns led many device manufacturers to outsource their sterilization processes.<sup>18</sup>

176. The Griffith prospectus stated that “the significant capital required to construct and maintain an in-house sterilization facility and the need to comply with dynamic environmental and health and safety regulations” has contributed to “increased volume of outsourced sterilization to contract processors.”<sup>19</sup>

177. On information and belief, GTCR learned both as part of its pre-acquisition due diligence investigation of Sterigenics’ business and in the course of providing management services after the acquisition, about Sterigenics’ use of EtO in its sterilization process, Sterigenics’

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<sup>17</sup> <https://www.sec.gov/Archives/edgar/data/1066622/0000950124-98-006256.txt>

<sup>18</sup> <https://www.sec.gov/Archives/edgar/data/1009988/0000891618-98-000926.txt>

<sup>19</sup> *Id.*

permitting history, the levels of its emissions of EtO, alternative sterilization processes, methodologies to capture EtO emissions and the cancer risks Sterigenics' EtO emissions posed to the neighboring community. GTCR also learned that the use of emissions control equipment required to reduce emissions of EtO was expensive and required substantial amounts of capital to operate.

178. GTCR purchased Sterigenics to capitalize on the risk-avoidant trend of companies outsourcing sterilization to outfits like Sterigenics. GTCR's website admits this: "Based on extensive diligence, GTCR believed that Sterigenics was well positioned to capitalize on the consistent industry growth fueled by increasing med tech procedure volumes and continued outsourced sterilization trends." In other words, GTCR chose to capitalize on the potential for growth fueled by danger—the danger of EtO and client-companies' fear of liability.

179. GTCR in turn used Sterigenics to execute a GTCR-focused investment strategy favoring growth and acquisition at the expense of safety.

180. GTCR did this utilizing a hand-picked executive team it had worked with many times in the past. This was GTCR's core business strategy, which it has actually trademarked as "The Leaders Strategy."<sup>20</sup>

181. GTCR's pitch books for the GTCR Funds it would use for the Sterigenics investment make the Leaders Strategy clear: "As in previous GTCR funds, [the Fund's] investment strategy is to team with strong executive teams to build companies in fragmented industries. These 'management startups' – where GTCR will first team up with a management

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<sup>20</sup> <https://www.gtcr.com/the-leaders-strategy/>

group and then purchase a platform on which to build the company – are expected to make up approximately 60% of the deals in [the Fund].”

182. Consistent with the Leaders Strategy, GTCR viewed its involvement with Sterigenics as a partnership with the new Sterigenics CEO and executive team to grow the Sterigenics business and profits.

183. Thus, as part of the Sterigenics transaction, GTCR hand-picked Michael Mulhern, whom GTCR had worked with in the past, to serve as Sterigenics CEO.<sup>21</sup> “Together, GTCR and Mr. Mulhern identified several initiatives to improve Sterigenics’ operational and growth initiatives, enhance its market leadership and drive incremental earnings growth.”<sup>22</sup>

184. In pursuit of the strategy, GTCR directed Sterigenics’ free cash flow to be used to pay interest on high yield bonds, acquire other companies, and only be used for capital investments that drove incremental earnings growth – *not* investments in safety and/or the maintenance or installation of emissions control equipment. GTCR knew or should have reasonably foreseen that the high yield bonds used in the leveraged buyout acquisitions left Sterigenics with extremely high interest expenses that would deplete its free cash flow and prevent its investing in emissions capture and control systems. Indeed, GTCR directed Sterigenics to borrow up, increasing the debt that required high interest payments.

185. In other words, GTCR acquired Sterigenics in order to actively expand the Sterigenics’ geographic footprint through acquisitions that depleted its free cash flow and

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<sup>21</sup><https://www.prnewswire.com/news-releases/amri-names-michael-mulhern-as-chief-executive-officer-300577662.html>

<sup>22</sup><https://www.gtc.com/leadership-stories/sterigenics-transformation-through-organic-growth-and-strategic-acquisitions/>



required it to pledge its assets as collateral for high yield debt financed leveraged buy-outs, including the acquisition of two sterilization facility add-ons and “the transformative acquisition” of Nordion, a key supplier to Sterigenics.<sup>23</sup>

186. In a March 8, 2011 report following the GTCR buy-out, Moody’s expressed concerns about Sterigenics’ free cash flow, capital expenditures, high interest expenses and EtO liability. It assigned Sterigenics debt and probability of default as “B2” or “highly speculative,” explaining that “Sterigenics has very high fixed operating costs and capital expenditures, which limits free cash flow and can lead to significant volatility in profit margins based on variation in revenue,” and specifically noting that “[t]he ratings also reflect the potential for event risk associated with the highly sensitive nature of the company’s raw materials, including radioactive isotopes and toxic gases.” “Because of some of the inherent risks in the business,” Moody’s wrote, “Moody’s believes available liquidity, such as cash balances and revolver access, is of particular importance to Sterigenics.”<sup>24</sup>

187. Despite Sterigenics’ struggles with free cash flow and its expensive capital structure, however, GTCR was determined to use Sterigenics as a platform to earn high returns through acquisitions of companies in the commercial sterilization industry. By using Sterigenics’ free cash flow and assets to finance a leveraged buy-out of Nordion, the world’s largest supplier of Cobalt 60, making Sterigenics the only vertically integrated commercial sterilization company

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<sup>23</sup><https://www.gtc.com/leadership-stories/sterigenics-transformation-through-organic-growth-and-strategic-acquisitions/>

<sup>24</sup><https://www.moody.com/research/Moodys-assigns-B2-CFR-to-STH-Holdings-Sterigenics-outlook-stable--PR-215182>

in the world, in combination with its cost cutting and incremental earnings growth strategy, GTCR was able to begin selling its interest in Sterigenics at a higher price.

188. Sterigenics CEO, Michael Mulhern, crow's about the Nordion acquisition on the GTCR website, explaining: "It came to our knowledge that a company was about to come to market to be sold. If that company got into the wrong hands, it would put at risk our source of supply. GTCR just kicked it into high gear and said we must own this asset, and today we're the only vertically integrated sterilization company in the world and in large part because GTCR made the decision and committed the resources [i.e., *Sterigenics'* resources] to get it done."

189. Thus, the Nordion acquisition further depleted Sterigenics free cash flow and forced Sterigenics to cut costs. After the acquisition, Sterigenics was forced to pay the interest on the high interest junk bond debt that GTCR had secured with Sterigenics' and Nordion's assets. On July 17, 2015 Moody's wrote "[t]he total transaction is valued at \$826 million and will be funded using a combination of new debt facilities and Nordion and Sterigenics' cash on hand"<sup>25</sup> and that most of the "cash on hand" was Sterigenics'. Moody's observed, "Nordion's business profile is weak" and "that around two-thirds of the combined company's gross profit will be generated by the legacy Sterigenics sterilization business."<sup>26</sup>

190. The degree of control GTCR exercised over Sterigenics – in service of GTCR's own interests and disregard of Sterigenics interests and potential liability – surpassed the control exercised as a normal incident of ownership.

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<sup>25</sup>[https://www.moody.com/research/Moodys-assigns-B2-to-STHIs-new-bank-debt-confirms-B2--PR\\_304313](https://www.moody.com/research/Moodys-assigns-B2-to-STHIs-new-bank-debt-confirms-B2--PR_304313)

<sup>26</sup>[https://www.moody.com/research/Moodys-assigns-B2-to-STHIs-new-bank-debt-confirms-B2--PR\\_304313](https://www.moody.com/research/Moodys-assigns-B2-to-STHIs-new-bank-debt-confirms-B2--PR_304313)

191. GTCR's relationship with Sterigenics executive team is evidence of this. At least four of GTCR's ten managing directors served as Sterigenics directors, acting (upon information and belief) for the protection of GTCR's interest.<sup>27</sup> Mulhern, GTCR's designated Sterigenics CEO, had previously been hired by GTCR as CEO of at least four GTCR-controlled portfolio companies.<sup>28</sup> The others had worked with GTCR as well.

192. Indeed, during an Illinois Venture Capital Association (IVCA) award ceremony on May 7, 2015, GTCR Managing Director Sean Cunningham made these connections clear when he thanked the new Sterigenics executives team for their work in the past. He thanked "long time management collaborator, Phil McNabb, who has been in several GTCR deals" for his role at Sterigenics. He thanked Kevin Theriot, stating "I don't know what your title is at Sterigenics but you played just about every role in now three GTCR portfolio companies. He is our [GTCR's] client problem solver."<sup>29</sup> He waxed on about GTCR's long employment relationship with Mulhern: "Michael and GTCR have a very long history together. We actually initially recruited Michael in 2002 to run AmSan [American Sanitary]." "We partnered with Michael [again] in 2008 and asked him to become the CEO of Fairmont Food Group, which he did with Phil and Kevin nearly tripling the EBITDA from 2008 to 2011." "The very same week we sold Fairmont Food ... we acquired Sterigenics with Michael, Phil and Kevin and the team." And he thanked the team

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<sup>27</sup><https://www.gtc.com/team-member/sean-l-cunningham/>;  
<https://www.gtc.com/gtc-promotes-aaron-d-cohen-and-sean-l-cunningham-to-principal/>;  
<https://www.gtc.com/team-member/benjamin-j-daverman/>;  
<https://www.bloomberg.com/research/stocks/private/person.asp?personId=66077&privcapId=20801>;  
<https://www.gtc.com/team-member/david-a-donnini/>;  
<https://www.bloomberg.com/research/stocks/private/person.asp?personId=1155789&privcapId=20801>  
<https://www.gtc.com/team-member/constantine-s-mihas/>  
<sup>28</sup><https://www.prnewswire.com/news-releases/amri-names-michael-mulhern-as-chief-executive-officer-300577662.html>

<sup>29</sup> <https://drive.google.com/file/d/0B1vewN8DYsfDei1nM2diWnJ1X28/view?pref=2&pli=1>

for growing Sterigenics EBITDA (profitability ratio) from \$90 million to \$250 million, allowing GTCR to recapitalize Sterigenics and recoup its investment.

193. Mulhern, at the same award ceremony, in turn acknowledged his long-term working relationship with GTCR: "I've had the great pleasure to work with [GTCR], as Sean pointed out, for thirteen years;" "Sterigenics is the third company that I have run for GTCR;" "I've described [GTCR] as very forward leaning in terms of doing acquisitions to grow the company and move it forward."

194. GTCR operated, managed, and controlled Sterigenics U.S. through its hand-picked team of Mulhern, McNabb and Theriot, whose interests and loyalty were to GTCR, which had provided them with executive employment for almost two decades, not Sterigenics. Based on their past experiences with GTCR, Mulhern, McNabb, and Theriot could expect that if they were able to drastically cut costs and invest in incremental earnings growth to increase Sterigenics' EBITDA in the short run, GTCR would be able to sell the company at a higher price, and they would have new employment opportunities to lead new GTCR projects.

195. Sterigenics U.S.' own employees raised concerns about the safety of its operations under GTCR's management, budgetary, and operational control. On Sterigenics U.S.' Glassdoor page one employee on June 25, 2013 wrote, after GTCR made Mulhern CEO, that: "Since new management was installed by the investment company that owns them, doubling customer prices and massive cost cutting are paramount. There is minimum attention to quality & safety which

will backfire eventually. Only profitability counts to boost the company's value. Btw, new CEO was installed some time ago."<sup>30</sup>

196. Another employee expressed his concerns with Sterigenics U.S.' lack of independence under GTCR's control, writing on February 21, 2012, that: "No education is given. No chance to expand kno[w]ledge. Owned by capital investment f[u]nd meaning that Sterigenics can [m]ake no independent decisions."<sup>31</sup>

197. Another wrote on February 24, 2015 that: "Safety is an issue sometimes regarding procedures. The maintenance team cuts a lot of corners. Managers aren't involved in what goes on during off shifts. A lot of our training is just a paperwork exercise. We learn very quickly how to cover our butts." That employee further addressed his concerns about safety under GTCR's management and recommended "[l]ock out the overrides for equipment. Fire any maintenance manager that shows operators how to manually operate equipment without it showing on the computer system." On October 9, 2015 another employee wrote "you're working with Ethylene Oxide which is extremely dangerous and the company seems to cut corners around safety at times."

198. GTCR knew that the only feasible way to acquire other companies in the commercial sterilization industry, like Nordion, without investing additional capital, would be to implement budget cuts or invest in projects that would drive incremental earnings growth to increase Sterigenics' free cash flow and EBITDA. GTCR also knew or should have reasonably foreseen that the budget cuts and investment in projects that only drove incremental earnings

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<sup>30</sup> <https://www.glassdoor.com/Reviews/Employee-Review-Sterigenics-RVW2768416.htm>

<sup>31</sup> [https://www.glassdoor.com/Reviews/Sterigenics-Reviews-E107174\\_P3.htm](https://www.glassdoor.com/Reviews/Sterigenics-Reviews-E107174_P3.htm)

would stop Sterigenics from spending on safety, maintenance and training and prevent Sterigenics' use, addition and/or maintenance of EtO emission control equipment, and cause continued injury to Plaintiffs and others exposed to the facilities' toxic emissions of EtO.

**X. Systematic Distribution of Money to Shareholders to Avoid Accountability to Creditors**

199. As discussed above, GTCR knew about the dangers of EtO and the liability risks before and after acquiring Sterigenics. One of the ways GTCR sought to limit its own investment risk and recoup its investment was by using dividend recapitalizations to pay itself dividends.

200. GTCR knew that if it continually pulled cash out of Sterigenics with dividend recapitalizations and pledged any increase in the value of Sterigenics' assets for bonds used to fund acquisitions of other companies in the commercial sterilization industry, it could limit any liability stemming from Sterigenics' EtO emissions.

201. Investopedia states: "A dividend recapitalization (also known as a dividend recap) happens when a company incurs a new debt in order to pay a special dividend to private investors or shareholders. This usually involves a company owned by a private investment firm, which can authorize a dividend recapitalization as an alternative to the company declaring regular dividends, based on earnings." "The dividend recap has seen explosive growth, primarily as an avenue for private equity firms to recoup some or all of the money they used to purchase their stake in a business. The practice is generally not looked upon favorably by creditors or common shareholders as it reduces the credit quality of the company, while benefiting only a select few." "The dividend reduces risk for PE firms by providing early and immediate returns to shareholders but increases debt on the portfolio company's balance sheet."

202. Shortly after it acquired Sterigenics in March of 2011, GTCR issued \$95 million in additional debt as part of a dividend recapitalization, pulling \$95 million out of Sterigenics.

203. After the buy-out, GTCR continually sought to increase Sterigenics' EBITDA by investing capital in projects that would drive incremental earnings growth and acquiring other companies using high yield debt. Between 2011 and 2016, acquisitions included Food Technology Service, Inc<sup>32</sup>; Gammarad<sup>33</sup>; Companhia Brasileira de Esterilização<sup>34</sup>; Nordion; Gibraltar Laboratories; Nelson Laboratories; and REVISS Services<sup>35</sup>.

204. In December 2016, when the US EPA altered EtO's cancer weight of evidence descriptor from "probably carcinogenic to humans" to "carcinogenic to humans" and changed its adult based inhalation unit risk to 0.0001 µg/m<sup>3</sup> from 0.003 µg/m<sup>3</sup> (a thirty fold increase), GTCR recognized that its investment in Sterigenics had become substantially more risky and drastically increased its efforts to recover its money.

205. Sterigenics U.S., Sotera and GTCR each played indispensable roles in a carefully-orchestrated funneling of nearly \$1.3 billion to shareholders over 27 months beginning in 2016, with the intention of ensuring that these funds will not be available to compensate Plaintiffs when they secure judgments against them in this Court. By these transfers, Sterigenics U.S. and Sotera effectively admit, but hope to avoid accountability for, their culpability in exposing Willowbrook

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<sup>32</sup><https://www.businesswire.com/news/home/20131206005135/en/Food-Technology-Service-Acquired-Sterigenics-International-LLC>

<sup>33</sup><https://www.businesswire.com/news/home/20141031005705/en/Sterigenics-International-Continues-Growth-Acquisition-Leading-Italian>

<sup>34</sup> <https://sterigenics.com/sterigenics-acquires-companhia-brasileira-de-esterilizacao-cbe/>

<sup>35</sup>[https://www.ots.at/presseaussendung/OTE\\_20160816\\_OT0004/sterigenics-international-and-its-subsidiary-nordion-enter-into-agreement-to-acquire-reviss-services](https://www.ots.at/presseaussendung/OTE_20160816_OT0004/sterigenics-international-and-its-subsidiary-nordion-enter-into-agreement-to-acquire-reviss-services)

area residents (including Plaintiffs) to the extraordinarily dangerous EtO, which seriously damaged the health of many, and even claimed the lives of some.

206. Specifically, during those 27 months, Sterigenics U.S. and Sotera executives were learning:

- a. in 2016, that the US EPA would reclassify ethylene oxide as a “known” (from “probable”) human carcinogen, and that the chemical was 30 times more likely to cause cancer than US EPA had previously recognized;
- b. in 2018, that this information would soon be reported to the public, including and especially Willowbrook area residents;
- c. in 2018, that cancer-stricken plaintiffs had begun to file lawsuits, some of them wrongful death lawsuits; and
- d. in 2019, that the first of these plaintiffs had successfully obtained the remand to this Court of their lawsuits which had been baselessly removed by defendants to federal court.

207. Yet, throughout these months, Sterigenics U.S. and Sotera executives were working with their corporate parents to make sure that virtually all available cash and other assets would be funneled away from these unsecured-creditor-Plaintiffs — and instead to their venture-capitalist investors and their banks in the form of massive distributions, pledged assets, and hundreds of millions in interest payments on borrowings undertaken to fund these payments. For example:

- a. In October 2016, Sterigenics-Nordion Topco, LLC (“Topco”), a parent of defendants Sterigenics U.S. and Sotera, borrowed \$350 million, for the purpose of funding a \$340 million cash distribution to GTCR and other shareholders. Sterigenics U.S. and Sotera were necessary to this borrowing, upon information and belief, as they each guaranteed its repayment by granting the lender group a security interest in their tangible and intangible assets, thus making these assets unavailable to Plaintiffs, as Sterigenics U.S.’ and Sotera’s unsecured creditors.



- b. In October 2017, Sotera Health Holdings, LLC (“Health Holdings”), also a parent of Sterigenics U.S. and Sotera, with Topco, together increased their borrowings by \$175 million and added to these increased borrowings some \$28 million in free cash to fund a \$203 million distribution to their shareholders, including GTCR. As with the October 16 transactions, upon information and belief, the repayment of these borrowings was guaranteed by Sterigenics U.S. and Sotera, thus granting the lender group a security interest in their tangible and intangible assets, making the pledged assets unavailable to pay the judgments Plaintiffs will secure.
- c. In August 2018, Sotera itself made a \$95 million cash distribution to investors, including GTCR, thus making this cash unavailable to Plaintiffs.
- d. In July 2019, Health Holdings borrowed an additional \$320 million, which was used in its entirety to fund a \$320 million cash distribution to Sterigenics’ investors (including GTCR). Upon information and belief, once again, Sterigenics U.S. and Sotera each facilitated this distribution by guaranteeing repayment of Health Holdings’ borrowing, thus granting the lender group a security interest in their tangible and intangible assets, thus making these assets unavailable to Plaintiffs as Sterigenics U.S. and Sotera’s unsecured creditors.
- e. Just last month, in December 2019, Health Holdings completed a refinancing of, *inter alia*, previous borrowings, obtaining nearly \$3.28 billion in new debt financing. This borrowing was used, in part, to fund a \$309 cash million distribution to investors in December of 2019. As with previous borrowings by their parents, Sterigenics U.S. and Sotera guaranteed the repayment of this new borrowing, thus granting to the lender group security interests in their tangible and intangible assets.

208. Sterigenics U.S., Sotera and GTCR’s central role in this orchestrated and intentional effort has effectively placed the companies’ cash and other assets out of Plaintiffs’ reach, prevented Sterigenics from investing in emission control equipment, and dangerously destabilized the Sterigenics companies, thereby jeopardizing the companies’ viability and the likelihood that Plaintiffs will receive just compensation for their injuries. As Moody’s has observed, after the 2019 transactions noted above, these companies have “a high degree of

environmental risk[,]” and will have “limited ability to absorb unforeseen setbacks or cash demands on the business...”

209. Neither Sterigenics U.S. nor Sotera received reasonably equivalent value for any of the guarantees they gave to enable dividends to be paid to GTCR to facilitate the dividend recapitalizations, notwithstanding that the guarantees increased their debt load and/or placed additional assets out of the reach of Plaintiffs as their unsecured creditors. The dividend recapitalizations and secured debt financing benefited only GTCR.

210. On June 21, 2019, Illinois enacted Public Act 101-0022. Public Act 101-0022 prohibits EtO sterilization facilities from operating in Illinois unless: (a) the facility captures 100 percent of all fugitive EtO emissions within the facility; and (b) the facility reduces EtO emissions to the atmosphere from each exhaust point by at least 99.9 percent or to 0.2 parts per million.

211. On June 24, 2019, Sterigenics applied to the IEPA for a construction permit to install or update its emissions control systems to ensure that it satisfies Public Act 101-0022’s EtO emission requirements.

212. In September of 2019, Sterigenics entered into an agreed final consent order prohibiting the operation of its Willowbrook EtO sterilization facilities before installing and testing new emissions capture and control equipment to reduce its EtO emissions in compliance with Public Act 101-0022 and reduce its EtO emissions below 85 pounds a year.

213. Other companies in the commercial sterilization industry have limited their EtO emissions with capital investments. In 2019, Medline, a competing EtO commercial sterilization company, invested several million dollars in equipment to comply with Illinois Public Act 101-

0022, and on January 7, 2020, Medline released a press report stating that it was in compliance with the regulation.

214. Sterigenics U.S. and Sotera declined to take measures to improve their emissions control systems due to the debt and dividend payments orchestrated by GTCR and on October 2019, when faced with the cost of capital improvement to reduce emissions, decided not to reopen the Willowbrook facilities.<sup>36</sup>

**COUNT 1**  
**Negligence – Sterigenics U.S., LLC**

215. Plaintiffs incorporate by reference all allegations contained herein.

216. Sterigenics U.S. owned and operated the facilities during a material portion of time since 1984.

217. Sterigenics U.S. managed, controlled, and supervised sterilization operations at the facilities during a material portion of time since 1984.

218. Sterigenics U.S. had a duty to exercise ordinary care for the health, safety, and well-being of Plaintiffs, their decedents, and others living and working near the Willowbrook facilities.

219. At all relevant times, Sterigenics U.S. knew that the EtO emitting from the facilities would have a toxic, poisonous, and highly deleterious effect upon the health, safety, and well-being of persons inhaling it.

220. Sterigenics U.S. breached its duty and failed to exercise ordinary care in one or more of the following ways:

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<sup>36</sup><https://www2.illinois.gov/epa/topics/community-relations/sites/ethylene-oxide/Documents/04OCT19.cvrltr.pdf>

- a. by choosing to operate within a densely populated residential area and thereby expose Plaintiffs, their decedents, and others to unsafe levels EtO and a heightened cancer risk;
- b. by emitting massive and unnecessary amounts of EtO into the air from the Willowbrook facilities;
- c. by using EtO as part of its sterilization process when safer alternatives could accomplish the same or similar business purpose without presenting the same level of risk to human health and well-being;
- d. by placing its own economic interests above the health and well-being of those who lived or worked near the facilities;
- e. by failing to warn or advise Plaintiffs, their decedents, and others who lived or worked near the facilities that they were being exposed to EtO;
- f. by failing to warn or advise Plaintiffs, their decedents, and others who lived or worked near the facilities that they were inhaling EtO;
- g. by failing to warn or advise Plaintiffs, their decedents, and others who lived or worked near the facilities that it was emitting a known carcinogen into the air from the facilities;
- h. by failing to employ safe methods to adequately control, reduce, minimize, and/or mitigate EtO emissions from the facilities;
- i. by failing to adequately study and test the effect of its EtO emissions from the facilities on the quality of air; and
- j. by failing to adequately study and test the effect of its EtO emissions from the facilities on the health and well-being of people who lived or worked near the facilities.

221. As a direct and proximate result of one or more of the foregoing acts or omissions, Plaintiffs and their decedents inhaled dangerous amounts of EtO and developed the diseases and conditions identified in their Short Form Complaints and, as a result, have been caused to incur and endure medical bills, lost wages, pain and suffering, mental anguish, disability, disfigurement, reduced life expectancy, loss of normal life, and death.

WHEREFORE Plaintiffs respectfully request that judgment be entered in their favor and against Sterigenics U.S., LLC in an amount to be determined by a trier of fact.

**COUNT 2**  
**Negligent Training – Sterigenics U.S., LLC**

222. Plaintiffs incorporate by reference all allegations contained herein.

223. Sterigenics U.S. had a duty to properly train its employees to control and dispose of hazardous substances including EtO and its byproducts, including but not limited to ethylene glycol.

224. At all relevant times, Sterigenics U.S. knew that failing to properly train its employees to control, monitor, and dispose of hazardous materials would have a toxic, poisonous, and highly deleterious effect upon the health, safety, and well-being of persons exposed to it.

225. Sterigenics U.S. breached its duty to properly train its employees in one or more of the following ways:

- a. by failing to train its employees about the carcinogenic effects of EtO;
- b. by failing to train its employees about the proper procedures to control and store EtO and its byproducts such that it would prevent unintended leaks, spills, or emissions;
- c. by failing to train its employees about the proper procedures to monitor EtO emissions;
- d. by failing to train its employees about the proper procedures for recording EtO emissions;
- e. by failing to train its employees about the proper procedures to adequately control, reduce, minimize, and/or mitigate EtO emissions from the facilities;

- f. by failing to train its employees about the proper procedures for repairing and/or replacing defective EtO emissions equipment;
- g. by failing to train its employees about the proper procedures for reporting uncontrolled emissions; and
- h. by failing to properly train its employees about the proper procedures for disposing of EtO and its byproducts.

226. As a direct and proximate result of one or more of the foregoing acts or omissions, Plaintiffs and their decedents inhaled dangerous amounts of EtO and developed the diseases and conditions identified in their Short Form Complaints and, as a result, have been caused to incur and endure medical bills, lost wages, pain and suffering, mental anguish, disability, disfigurement, reduced life expectancy, loss of normal life, and death.

WHEREFORE Plaintiffs respectfully request that judgment be entered in their favor and against Sterigenics U.S., LLC in an amount to be determined by a trier of fact.

### **COUNT 3**

#### **Negligent Supervision – Sterigenics U.S., LLC**

227. Plaintiffs incorporates by reference all allegations contained herein.

228. Sterigenics U.S. had a duty to properly supervise its employees to prevent a creation of danger or harm to others.

229. At all relevant times, Sterigenics U.S. knew that failing to properly supervise its employees in their control, monitoring, and disposal of hazardous materials including EtO and its byproducts would have a toxic, poisonous, and highly deleterious effect upon the health, safety, and well-being of persons inhaling it.

230. Sterigenics U.S., LLC breached its duty to supervise its employees in one or more of the following ways:

- a. by failing to recognize when the proper procedures to control and store EtO and its byproducts were violated, resulting in unintended leaks, spills, or emissions;
- b. by failing to reprimand and/or discipline employees when the proper procedures to control and store EtO and its byproducts were violated, resulting in unintended leaks, spills, or emissions;
- c. by retaining employees who repeatedly violated the proper procedures to control and store EtO and its byproducts, resulting in unintended leaks, spills, or emissions;
- d. by failing to recognize when the proper procedures to adequately control, reduce, minimize, and/or mitigate EtO emissions from the facilities were violated, resulting in unintended leaks, spills, or emissions;
- e. by failing to reprimand and/or discipline employees when the proper procedures to adequately control, reduce, minimize, and/or mitigate EtO emissions from the facilities were violated, resulting in unintended leaks, spills, or emissions;
- f. by retaining employees who repeatedly violated the proper procedures to adequately control, reduce, minimize, and/or mitigate EtO emissions from the facilities, resulting in unintended leaks, spills, or emissions;
- g. by failing to recognize when the proper procedures for repairing and/or replacing defective EtO emissions equipment were violated;
- h. by failing to reprimand and/or discipline employees when the proper procedures for repairing and/or replacing defective EtO emissions equipment were violated;
- i. by retaining employees who repeatedly violated the proper procedures for repairing and/or replacing defective EtO emissions equipment;
- j. by failing to recognize when the proper procedures for reporting uncontrolled emissions were violated;
- k. by failing to reprimand and/or discipline employees when the proper procedures for reporting uncontrolled emissions were violated;
- l. by retaining employees who repeatedly violated the proper procedures for reporting uncontrolled emissions;

- m. by failing to recognize when the proper procedures for disposing of EtO or its byproducts were violated;
- n. by failing to reprimand and/or discipline employees when the proper procedures for disposing of EtO or its byproducts were violated;
- o. by retaining employees who repeatedly violated the proper procedures for disposing of EtO or its products;
- p. by failing to recognize when the proper procedures to monitor EtO emissions were violated;
- q. by failing to reprimand and/or discipline employees when the proper procedures to monitor EtO emissions were violated;
- r. by retaining employees who repeatedly violated the proper procedures to monitor EtO emissions;
- s. by failing to recognize when the proper procedures for recording EtO emissions were violated;
- t. by failing to reprimand and/or discipline employees when the proper procedures for recording EtO emissions were violated; and
- u. by retaining employees who repeatedly violated the proper procedures for recording EtO emissions.

231. As a direct and proximate result of one or more of the foregoing acts or omissions, Plaintiffs and their decedents inhaled dangerous amounts of EtO and developed the diseases and conditions identified in their Short Form Complaints and, as a result, have been caused to incur and endure medical bills, lost wages, pain and suffering, mental anguish, disability, disfigurement, reduced life expectancy, loss of normal life, and death.

WHEREFORE Plaintiffs respectfully request that judgment be entered in their favor and against Sterigenics U.S., LLC in an amount to be determined by a trier of fact.



**COUNT 4**  
**Willful and Wanton Conduct – Sterigenics U.S., LLC**

232. Plaintiffs incorporate by reference all allegations contained herein.

233. Sterigenics U.S. had a duty to refrain from willful and wanton conduct and/or conduct that exhibits an utter indifference and/or conscious disregard to the health, safety, and well-being of Plaintiffs, their decedents, and others living and working in the area surrounding the facilities.

234. At all relevant times, Sterigenics U.S. knew that EtO emitting from the facilities would have a toxic, poisonous, and highly deleterious effect upon the health, safety, and well-being of persons inhaling it.

235. Sterigenics U.S. breached its duty and was guilty of willful and wanton conduct in one or more of the following ways:

- a. by choosing to operate within a densely populated residential area and thereby expose Plaintiffs, their decedents, and others to unsafe levels EtO and a heightened cancer risk;
- b. by emitting massive and unnecessary volumes EtO into the air from the Willowbrook facilities notwithstanding its knowledge that EtO is toxic, poisonous, and causes adverse medical issues including, but not limited to, cancer;
- c. by placing its own economic interests above the health, safety, and well-being of Plaintiffs, their decedents, and others who lived or worked near the facilities;
- d. by failing to warn or advise Plaintiffs, their decedents, and others who lived or worked near the facilities that they were being exposed to EtO notwithstanding its knowledge that EtO is toxic, poisonous, and causes adverse medical issues including, but not limited to, cancer;
- e. by failing to a warn or advise Plaintiffs, their decedents, and others who lived and worked in the Willowbrook area that they were inhaling EtO

notwithstanding its knowledge that EtO is toxic, poisonous, and causes adverse medical issues including, but not limited to, cancer;

- f. by emitting EtO, a known carcinogen, into the air from the facilities before fully studying, researching, or understanding the deleterious impact that EtO inhalation exposure has on the health, safety, and well-being of those in the surrounding area; and
- g. by deliberately concealing its knowledge concerning the deleterious impact that EtO inhalation exposure has on Plaintiffs, their decedents, and others who lived or worked near the facilities.

236. As a direct and proximate result of one or more of the foregoing acts or omissions, Plaintiffs and their decedents inhaled dangerous amounts of EtO and developed the diseases and conditions identified in their Short Form Complaints and, as a result, have been caused to incur and endure medical bills, lost wages, pain and suffering, mental anguish, disability, disfigurement, reduced life expectancy, loss of normal life, and death.

WHEREFORE Plaintiffs respectfully request that judgment be entered in their favor and against Sterigenics U.S., LLC in an amount to be determined by a trier of fact.

#### **COUNT 5**

##### **Ultrahazardous Activity / Strict Liability – Sterigenics U.S., LLC**

237. Plaintiffs incorporate by reference all allegations contained herein.

238. Sterigenics U.S. use and emission of EtO from the facilities constitutes an ultra-hazardous activity.

239. Sterigenics U.S.'s use and emission of EtO created a high degree of risk to Plaintiffs, their decedents, and others who lived or worked near the facilities such that the likelihood of cancer caused by its use and emission of EtO is as much as 64 times the level of acceptable risk.

240. Sterigenics U.S.'s use and emission of EtO is especially inappropriate given the area in which it is located; namely, within a densely populated residential area.

241. While the activities conducted by Sterigenics U.S. are exceedingly dangerous, it offers little to no value to the surrounding community.

242. Because the activities of Sterigenics U.S. are ultrahazardous, it is strictly liable for any injuries proximately resulting therefrom.

243. As a direct and proximate result of one or more of the foregoing acts or omissions, Plaintiffs and their decedents inhaled dangerous amounts of EtO and developed the diseases and conditions identified in their Short Form Complaints and, as a result, have been caused to incur and endure medical bills, lost wages, pain and suffering, mental anguish, disability, disfigurement, reduced life expectancy, loss of normal life, and death.

WHEREFORE Plaintiffs respectfully request that judgment be entered in their favor and against Sterigenics U.S., LLC in an amount to be determined by a trier of fact.

**COUNT 6**  
**Civil Battery – Sterigenics U.S., LLC**

244. Plaintiffs incorporate by reference all allegations contained herein.

245. At all relevant times, Sterigenics U.S. knew that EtO emitting from the facilities would have a toxic, poisonous, and highly deleterious effect upon the health, safety, and well-being of persons inhaling it.

246. Notwithstanding this knowledge, Sterigenics U.S. caused and/or set in motion events that caused EtO to come in contact with Plaintiffs and their decedents.

247. Plaintiffs and their decedents' contact with EtO was offensive and harmful.

248. Sterigenics U.S. intended to emit EtO into the air despite its knowledge that it would contact people who lived or worked near the facilities.

249. Plaintiffs and their decedents did not consent to contact with EtO emitted from the facilities.

250. As a direct and proximate result of one or more of the foregoing acts or omissions, Plaintiffs and their decedents inhaled dangerous amounts of EtO and developed the diseases and conditions identified in their Short Form Complaints and, as a result, have been caused to incur and endure medical bills, lost wages, pain and suffering, mental anguish, disability, disfigurement, reduced life expectancy, loss of normal life, and death.

WHEREFORE Plaintiffs respectfully request that judgment be entered in their favor and against Sterigenics U.S., LLC in an amount to be determined by a trier of fact.

**COUNT 7**  
**Public Nuisance – Sterigenics U.S., LLC**

251. Plaintiffs incorporate by reference all allegations contained herein.

252. The general public has a common right to breathe in clean air without dangerous levels of carcinogens such as EtO. The Illinois Constitution guarantees these rights to its citizens. Article XI of the Illinois Constitution of 1970, Environment, Section 1, Public Policy - Legislative Responsibility, provides that:

The public policy of the State and the duty of each person is to provide and maintain a healthful environment for the benefit of this and future generations. The General Assembly shall provide by law for the implementation and enforcement of this public policy.

Article XI of the Illinois Constitution of 1970, Environment, Section 2, Rights of Individuals, provides that:

Each person has the right to a healthful environment. Each person may enforce this right against any party, governmental or private, through appropriate legal proceedings subject to reasonable limitation and regulation as the General Assembly may provide by law.

253. Sterigenics U.S.'s use and emission of EtO from the facilities substantially and unreasonably infringed upon and/or transgresses this public right. In particular, the activities of Sterigenics U.S. caused those who lived and worked in the area surrounding the facilities to inhale high levels of EtO on a routine and constant basis, and further, to be exposed to air causing a substantially elevated risk of cancer.

254. Sterigenics U.S.'s use and emission of EtO is especially inappropriate given the area in which it is located; namely, within a densely populated residential area.

255. As a direct and proximate result of one or more of the foregoing acts or omissions, Plaintiffs and their decedents inhaled dangerous amounts of EtO and developed the diseases and conditions identified in their Short Form Complaints and, as a result, have been caused to incur and endure medical bills, lost wages, pain and suffering, mental anguish, disability, disfigurement, reduced life expectancy, loss of normal life, and death.

WHEREFORE Plaintiffs respectfully request that judgment be entered in their favor and against Sterigenics U.S., LLC in an amount to be determined by a trier of fact.

**COUNT 8**  
**Negligence – Sotera Health, LLC**

256. Plaintiffs incorporate by reference all allegations contained herein.

257. Sotera wholly owned, managed, controlled, supervised and otherwise participated directly in the sterilization operations at the Willowbrook facilities. With respect to

those operations, Sotera shared a complete unity of interest with Sterigenics U.S., with Sterigenics U.S. operating as an instrumentality of Sotera.

258. At all relevant times, Sotera knew that the EtO emitting from the facilities would have a toxic, poisonous, and highly deleterious effect upon the health, safety, and well-being of persons inhaling it.

259. Sotera had a duty to ensure that the facilities were operated with ordinary care for the health, safety, and well-being of Plaintiffs, their decedents, and others living and working near the facilities.

260. Sotera breached this duty by failing to ensure that the facilities were operated with ordinary care for the health, safety, and well-being of Plaintiffs, their decedents, and others living and working near the facilities with respect to one or more of the following:

- a. by conducting operations in a densely populated residential area, exposing Plaintiffs, their decedents, and others to unsafe levels EtO and a heightened cancer risk;
- b. by emitting massive and unnecessary amounts of EtO into the air from the facilities;
- c. using of EtO as part of its sterilization process when safer alternatives could accomplish the same or similar business purpose without presenting the same level of risk to human health and well-being;
- d. placing of its own economic interests and the interest of Sterigenics U.S. above the health and well-being of those who lived or worked near the facilities;
- e. failing to warn or advise Plaintiffs, their decedents, and others who lived or worked near the facilities that they were being exposed to EtO;
- f. failing to warn or advise Plaintiffs, their decedents, and others who lived or worked near the facilities that they were inhaling EtO;
- g. failing to warn or advise Plaintiffs, their decedents, and others who

lived or worked near the facilities that it was emitting a known carcinogen into the air from the facilities;

- h. failing to employ safe methods to adequately control, reduce, minimize, and/or mitigate EtO emissions from the facilities;
- i. failing to adequately study and test the effect of its EtO emissions from the facilities on the quality of air; and
- j. failing to adequately study and test the effect of its EtO emissions from the facilities on the health and well-being of people who lived or worked near the facilities.

261. As a direct and proximate result of one or more of the foregoing acts or omissions, Plaintiffs and their decedents inhaled dangerous amounts of EtO and developed the diseases and conditions identified in their Short Form Complaints and, as a result, have been caused to incur and endure medical bills, lost wages, pain and suffering, mental anguish, disability, disfigurement, reduced life expectancy, loss of normal life, and death.

WHEREFORE Plaintiffs respectfully request that judgment be entered in their favor and against Sotera Health, LLC in an amount to be determined by a trier of fact.

**COUNT 9**  
**Negligent Training – Sotera Health, LLC**

262. Plaintiffs incorporate by reference all allegations contained herein.

263. As a direct participant in the facilities' sterilization operations, including but not limited to developing written operating procedures for training and guiding the work of operators and training operations employees, Sotera had a duty to ensure that the facilities' employees were properly trained on conducting sterilization operations, the use, control, storage, and disposal of hazardous substances including EtO and its byproducts, and the operation and maintenance of equipment used in the sterilization process, to prevent a creation of danger or

harm to others.

264. Sotera, knowing that that a failure to ensure the facilities' employees were properly trained would have a toxic, poisonous, and highly deleterious effect upon the health, safety, and well-being of persons exposed to it, breached this duty.

265. As a direct and proximate result of one or more of the foregoing acts or omissions, Plaintiffs and their decedents inhaled dangerous amounts of EtO and developed the diseases and conditions identified in their Short Form Complaints and, as a result, have been caused to incur and endure medical bills, lost wages, pain and suffering, mental anguish, disability, disfigurement, reduced life expectancy, loss of normal life, and death.

WHEREFORE Plaintiffs respectfully request that judgment be entered in their favor and against Sotera Health, LLC in an amount to be determined by a trier of fact.

**COUNT 10**  
**Willful and Wanton Conduct – Sotera Health, LLC**

266. Plaintiffs incorporate by reference all allegations contained herein.

267. At all relevant times, Sotera knew that EtO emitting from the facilities would have a toxic, poisonous, and highly deleterious effect upon the health, safety, and well-being of persons inhaling it.

268. Sotera had a duty to refrain from willful and wanton conduct and/or conduct that exhibits an utter indifference and/or conscious disregard to the health, safety, and well-being of Plaintiffs, their decedents, and others living and working in the area surrounding the facilities.

269. Sotera breached its duty and was guilty of willful and wanton conduct with respect to one or more of the following:



- a. conducting operations in a densely populated residential area, exposing Plaintiffs, their decedents, and others to unsafe levels EtO and a heightened cancer risk;
- b. emitting massive and unnecessary volumes EtO into the air from the facilities notwithstanding its knowledge that EtO is toxic, poisonous, and causes adverse medical issues including, but not limited to, cancer;
- c. placing its own economic interests above the health, safety, and well-being of Plaintiffs, their decedents, and others who lived or worked near the facilities;
- d. failing to warn or advise Plaintiffs, their decedents, and others who lived or worked near the facilities that they were being exposed to EtO notwithstanding Sotera's knowledge that EtO is toxic, poisonous, and causes adverse medical issues including, but not limited to, cancer;
- e. failing to warn or advise Plaintiffs, their decedents, and others who lived and worked in the Willowbrook area that they were inhaling EtO notwithstanding Sotera's knowledge that EtO is toxic, poisonous, and causes adverse medical issues including, but not limited to, cancer;
- f. emitting EtO, a known carcinogen, into the air from the facilities before fully studying, researching, or understanding the deleterious impact that EtO inhalation exposure has on the health, safety, and well-being of those in the surrounding area; and
- g. deliberately concealing its knowledge concerning the deleterious impact that EtO inhalation exposure has on Plaintiffs, their decedents, and others who lived or worked near the facilities.

270. As a direct and proximate result of one or more of the foregoing acts or omissions, Plaintiffs and their decedents inhaled dangerous amounts of EtO and developed the diseases and conditions identified in their Short Form Complaints and, as a result, have been caused to incur and endure medical bills, lost wages, pain and suffering, mental anguish, disability, disfigurement, reduced life expectancy, loss of normal life, and death.

WHEREFORE Plaintiffs respectfully request that judgment be entered in their favor and against Sotera Health, LLC in an amount to be determined by a trier of fact.

**COUNT 11**  
**Public Nuisance – Sotera Health, LLC**

271. Plaintiffs incorporate by reference all allegations contained herein.

272. The general public has a common right to breathe in clean air without dangerous levels of carcinogens such as EtO. The Illinois Constitution guarantees these rights to its citizens. Article XI of the Illinois Constitution of 1970, Environment, Section 1, Public Policy - Legislative Responsibility, provides that:

The public policy of the State and the duty of each person is to provide and maintain a healthful environment for the benefit of this and future generations. The General Assembly shall provide by law for the implementation and enforcement of this public policy.

Article XI of the Illinois Constitution of 1970, Environment, Section 2, Rights of Individuals, provides that:

Each person has the right to a healthful environment. Each person may enforce this right against any party, governmental or private, through appropriate legal proceedings subject to reasonable limitation and regulation as the General Assembly may provide by law.

273. The activities of Sotera as described above unreasonably infringed upon and/or transgressed this public right by causing those who lived and worked in the area surrounding the facilities to inhale high levels of EtO on a routine and constant basis, and further, to be exposed to air causing a substantially elevated risk of cancer.

274. Sotera's use and emission of EtO is especially inappropriate given the area in which it is located; namely, within a densely populated residential area.

275. As a direct and proximate result of one or more of the foregoing acts or omissions, Plaintiffs and their decedents inhaled dangerous amounts of EtO and developed the diseases and

conditions identified in their Short Form Complaints and, as a result, have been caused to incur and endure medical bills, lost wages, pain and suffering, mental anguish, disability, disfigurement, reduced life expectancy, loss of normal life, and death.

WHEREFORE Plaintiffs respectfully request that judgment be entered in their favor and against Sotera Health, LLC in an amount to be determined by a trier of fact.

#### **COUNT 12**

##### **Negligence – Griffith Foods International, Inc. (Griffith Labs)**

276. Plaintiffs incorporate by reference all allegations contained herein.

277. From July 30, 1984 to July 31, 1986, Griffith Labs was the permittee and thus operator of the Willowbrook facilities.

278. From July 30, 1984 to May 14, 1999, as set forth in the paragraphs above, Griffith Labs was a direct participant of operations at the Willowbrook facilities such that it both actively participated in, directed, and/or exercised control over operations, and it mandated an overall course of action and authorized the manner in which specific activities were conducted.

279. Additionally, from July 30, 1984 to April 15, 1999, as set forth in the paragraphs above, the relationship between Griffith Labs and the Operators was such that was no true separate identity between them.

280. The “touchstone” of the duty analysis in Illinois “is whether a plaintiff and a defendant stood in such a relationship to one another that the law imposed on defendant an obligation of reasonable conduct for the benefit of the plaintiff.” *Marshall v. Burger King Corp.*, 222 Ill.2d 422, 436 (2006). The existence of such a “relationship” is determined by consideration of four factors, including: (a) the reasonable foreseeability of the injury; (b) the likelihood of the

injury; (c) the magnitude of the burden of guarding against the injury; and (d) the consequences of placing that burden on the defendant. *Id.* at 436-37.

281. At all relevant times, Griffith Labs knew that the EtO emitting from the facilities would have a toxic, poisonous, and highly deleterious effect upon the health, safety, and well-being of persons inhaling it. Accordingly, at all relevant times, it was reasonably foreseeable to Griffith Labs that emitting EtO from the Willowbrook facilities would injure Plaintiffs. Numerous facts set forth demonstrate that such injury was reasonably foreseeable, including in Paragraphs 5, 7, 9-10, 33-35, 37-56, 68-70, 74-76, 82-88, 96-99, 111-129, 131-141, 144-148, and 159-166.

282. At all relevant times, the likelihood of injury to Plaintiffs was exceedingly high as set forth above in Paragraphs 5, 7, 9-10, 34, 37-39, 42-56, 82-91, 111-129, 131-141, and 159-166.

283. Griffith Labs not only knew that it was emitting a known carcinogen into the Willowbrook community and that it would be inhaled by neighboring residents, but Griffith Labs also knew that conservative modeling performed by IEPA showed that its emissions were “several magnitudes higher than desirable.”

284. The magnitude of the burden on Griffith Labs of guarding against such injury was minimal as set forth above in paragraphs 35, 56, 70, 82-95, 100-102, and 146-147, particularly for a self-espoused pioneer and expert in the field of EtO. Griffith Labs could have, but did not, control the emissions from the Willowbrook facility by using state of the art equipment or even the same equipment used at its other facilities during the same timeframe.

285. The consequences of placing such a burden on Griffith Labs would be appropriate, such that the expert in the field—with superlative knowledge and expertise with EtO and the sterilization process, the opportunity to select and update sterilization sites, emissions controls,

operational actions and processes, and financial incentive and ability—would have the obligation to prevent foreseeable injury to residents who, on the other hand, have no such expertise or knowledge, no such opportunity, and no such corresponding financial ability.

286. Accordingly, at all relevant times, Griffith Labs had a duty to ensure that the facilities were operated with ordinary care for the health, safety, and well-being of Plaintiffs, their decedents, and others living and working near the facilities.

287. Griffith Labs breached this duty by failing to ensure that the facilities were operated with ordinary care for the health, safety, and well-being of Plaintiffs, their decedents, and others living and working near the facilities with respect to one or more of the following:

- a. Locating, and then for the next 16 years operating, controlling and/or maintaining, an EtO sterilization facility in the residential community of Willowbrook despite knowing at all times that EtO is very dangerous to human health and that area residents, workers, and schoolchildren would be unknowingly breathing daily the facility's EtO emissions, significantly increasing their risk of contracting cancer and other serious illnesses.
- b. Operating the Willowbrook facility with virtually no emission control equipment designed to remove or eliminate EtO from emissions for its first four years of operation (1984-1988), even though Griffith Labs knew that this violated the standard of care and would result in its neighbors being unnecessarily exposed to more than 500,000 pounds of EtO emissions during that time;
- c. Operating the Willowbrook facility for the entirety of the 1984 – 1999 time period without any control designed to remove or eliminate EtO from emissions from the facility's back-vents, aeration rooms, and work aisles, even though Griffith Labs knew that this too violated the standard of care and would result in its neighbors being unnecessarily exposed to at least 400,000 pounds of EtO emissions (in addition to those alleged in subparagraph (b), above) during that time;
- d. Designing in 1984, and then from 1984 to 1999, mandating the use of, a sterilization/emissions process that Griffith Labs knew violated the

standard of care and was inadequate to protect the health of its neighbors against EtO emissions from the facility;

- e. Purchasing, using, and mandating the use of sterilization and emission control equipment that Griffith Labs knew violated the standard of care and was inadequate to protect the health of its neighbors against EtO emissions from the facility;
- f. Failing to use emission control equipment in Willowbrook and otherwise comply with the standard of care that Griffith Labs was in fact using in its other EtO facilities in the United States and other countries, which resulted in EtO emissions from the Willowbrook facilities that were sometimes hundreds of times higher, and more dangerous, than those at Griffith Labs' other facilities;
- g. Failing to employ safe methods to adequately control, reduce, minimize, and/or mitigate EtO emissions from the facilities;
- h. Using EtO as part of its sterilization process when safer alternatives could accomplish the same or similar business purpose without presenting the same level of risk to human health and well-being;
- i. Conducting operations which exposed Plaintiffs, their decedents, and others to unsafe levels EtO and a heightened cancer risk;
- j. Emitting massive and unnecessary amounts of EtO into the air from the facilities;
- k. Failing to heed IEPA's warning that emissions into the Willowbrook community based on Griffith's operational design would be "several magnitudes higher than desirable";
- l. Failing to heed IEPA's advisement that steps "can be taken to minimize emissions in order to reduce the ambient impacts to an acceptable level";
- m. Failing to warn the Willowbrook community, including Plaintiffs, that the toxicity data reviewed by the IEPA and communicated to Griffith "provides evidence of human cancers of the pancreas, bladder, brain, central nervous system and stomach associated with EtO exposure";
- n. Failing to warn the Willowbrook community, including Plaintiffs, that "various animal studies have shown carcinogenic, mutagenic, leukogenic and teratogenic effects" of EtO exposure;

- o. Failing to warn its neighbors that they were in danger because of the Willowbrook facility's EtO emissions, even though Griffith Labs: (A) knew that the emissions threatened its neighbors' health and that its neighbors had no idea that EtO was even being emitted into their community, and (B) provided warnings to residents living near some of Griffith Labs' *other* EtO sterilization facilities outside of Illinois;
- p. Failing to warn or advise Plaintiffs, their decedents, and others who lived or worked near the facilities that they were being exposed to EtO;
- q. Failing to warn or advise Plaintiffs, their decedents, and others who lived or worked near the facilities that they were inhaling EtO;
- r. Failing to warn or advise Plaintiffs, their decedents, and others who lived or worked near the facilities that it was emitting a known carcinogen into the air from the facilities;
- s. Failing to test the air outside the Willowbrook facility (ambient air) to determine the concentrations of EtO that had been emitted from the facility and would be inhaled by Griffith Labs' neighbors, even though Griffith Labs was specifically required to conduct extensive ambient air testing in 1984-1986 as a special condition for its permit to operate the Willowbrook facility;
- t. Failing to adequately study and test the effect of its EtO emissions from the facilities on the quality of air;
- u. Failing to adequately study and test the effect of its EtO emissions from the facilities on the health and well-being of people who lived or worked near the facilities;
- v. Misleading the State's regulator, Illinois EPA, by, *inter alia*, failing to inform the agency as to what Griffith Labs knew about the dangers of EtO to human health; planning to emit more EtO from the Willowbrook facility than it had represented to induce IEPA into granting Griffith Labs the initial Willowbrook permit; failing to advise IEPA that it was not using the same caliber equipment and processes in Willowbrook that it was using at its other facilities; and reporting to IEPA EtO emissions from Willowbrook that were based on assumptions which Griffith Labs knew had no basis or were false;

- w. Failing to train its employees and failing to audit the Willowbrook facility to ensure that the facility's operations were not endangering its neighbors even though such training and auditing were Griffith Labs' responsibilities;
- x. Placing its own economic interests above the health and well-being of those who lived or worked near the facilities;
- y. Failing to provide the Operators with capital to invest in reasonable emission control systems even though such capital was available;
- z. Failing to provide the Operators with capital to invest in reasonable equipment upgrades and maintenance even though such capital was available; and
- aa. Working independently and through an EtO industry lobbyist to improperly dispute conclusions concerning the health dangers of EtO that had been reached by independent scientists and health agencies with the purpose of understating those health dangers and ultimately creating a justification for emissions that endangered the health of those living near the Willowbrook (and other) sterilization facilities.

288. As a direct and proximate result of one or more of the foregoing acts or omissions, Plaintiffs and their decedents inhaled dangerous amounts of EtO and developed the diseases and conditions identified in their Short Form Complaints and, as a result, have been caused to incur and endure medical bills, lost wages, pain and suffering, mental anguish, disability, disfigurement, reduced life expectancy, loss of normal life, and death.

WHEREFORE Plaintiffs respectfully request that judgment be entered in their favor and against Griffith Foods International, Inc. in an amount to be determined by a trier of fact.

### COUNT 13

#### Negligent Training – Griffith Foods International, Inc. (Griffith Labs)

289. Plaintiffs incorporate by reference all allegations contained herein.

290. As a direct participant in the facilities' sterilization operations, including but not



limited to developing written operating procedures for training and guiding the work of operators and training operations employees, Griffith Labs had a duty to ensure that the facilities' employees were properly trained on the following to prevent a creation of danger or harm to others:

- a. conducting sterilization operations;
- b. the use, control, storage, and disposal of hazardous substances including EtO and its byproducts;
- c. the operation and maintenance of equipment used in the sterilization process;
- d. running aeration room and back-vent emissions through the emission control system;
- e. keeping chamber doors, aeration doors, and exterior doors closed and sealed so as to prevent EtO from escaping directly into the atmosphere;
- f. preventing and/or minimizing off-gassing of sterilized products in areas that were not ventilated to emission controls; and
- g. auditing the Willowbrook facility to ensure that the facility's operations were not endangering its neighbors.

291. Griffith Labs, knowing that that a failure to ensure the facilities' employees were properly trained would have a toxic, poisonous, and highly deleterious effect upon the health, safety, and well-being of persons exposed to it, breached this duty.

292. As a direct and proximate result of one or more of the foregoing acts or omissions, Plaintiffs and their decedents inhaled dangerous amounts of EtO and developed the diseases and conditions identified in their Short Form Complaints and, as a result, have been caused to incur and endure medical bills, lost wages, pain and suffering, mental anguish, disability, disfigurement, reduced life expectancy, loss of normal life, and death.

WHEREFORE Plaintiffs respectfully request that judgment be entered in their favor and against Griffith Foods International, Inc. in an amount to be determined by a trier of fact.

**COUNT 14**

**Negligent Supervision – Griffith Foods International, Inc. (Griffith Labs)**

293. Plaintiffs incorporate by reference all allegations contained herein.

294. As a direct participant in the facilities' sterilization operations, including but not limited to preparing and implementing the facilities' risk management plans, developing written operating procedures for training and guiding the work of operators, training operations employees, investigating incidents, conducting safety audits, and evaluating the facilities' accident history, Griffith Labs had a duty to ensure the facilities' employees were properly supervised on conducting sterilization operations, the use, control, storage, and disposal of hazardous substances including EtO and its byproducts, and the operation and maintenance of equipment used in the sterilization process, to prevent a creation of danger or harm to others.

295. Griffith Labs, knowing that that a failure to ensure the facilities' employees were properly supervised would have a toxic, poisonous, and highly deleterious effect upon the health, safety, and well-being of persons exposed to it, breached this duty.

296. As a direct and proximate result of one or more of the foregoing acts or omissions, Plaintiffs and their decedents inhaled dangerous amounts of EtO and developed the diseases and conditions identified in their Short Form Complaints and, as a result, have been caused to incur and endure medical bills, lost wages, pain and suffering, mental anguish, disability, disfigurement, reduced life expectancy, loss of normal life, and death.

WHEREFORE Plaintiffs respectfully request that judgment be entered in their favor and against Griffith Foods International, Inc. in an amount to be determined by a trier of fact.

**COUNT 15**

**Willful and Wanton – Griffith Foods International, Inc. (Griffith Labs)**

297. Plaintiffs incorporate by reference all allegations contained herein.

298. At all relevant times, Griffith Labs knew that EtO emitting from the facilities would have a toxic, poisonous, and highly deleterious effect upon the health, safety, and well-being of persons inhaling it.

299. Griffith Labs had a duty to refrain from willful and wanton conduct and/or conduct that exhibits an utter indifference and/or conscious disregard to the health, safety, and well-being of Plaintiffs, their decedents, and others living and working in the area surrounding the facilities.

300. Griffith Labs breached its duty and was guilty of willful and wanton conduct with respect to one or more of the following:

- a. Locating, and for then for next 16 years, operating, controlling and/or maintaining, an EtO sterilization facility in the residential community of Willowbrook despite knowing that all times that EtO is very dangerous to human health and that area residents, workers, and schoolchildren would be unknowingly breathing daily the facility's EtO emissions, significantly increasing their risk of contracting cancer and other serious illnesses;
- b. Operating the Willowbrook facility with virtually no emission control equipment designed to remove or eliminate EtO from emissions for its first four years of operation (1984-1988), even though Griffith Labs knew that this violated the standard of care and would result in its neighbors being unnecessarily exposed to more than 500,000 pounds of EtO emissions during that time;
- c. Operating the Willowbrook facility for the entirety of the 1984 – 1999 time period without any control designed to remove or eliminate EtO from

emissions from the facility's back-vents and aeration rooms, even though Griffith Labs knew that this too violated the standard of care and would result in its neighbors being unnecessarily exposed to at least 400,000 pounds of EtO emissions (in addition to those alleged in subparagraph (b), above) during that time;

- d. Designing and requiring the use of a sterilization/emissions process that Griffith Labs knew violated the standard of care and was inadequate to protect the health of its neighbors against EtO emissions from the facility;
- e. Purchasing, using, and authorizing the use of sterilization and emission control equipment that Griffith Labs knew violated the standard of care and was inadequate to protect the health of its neighbors against EtO emissions from the facility;
- f. Failing to use emission control equipment in Willowbrook and otherwise comply with the standard of care that Griffith Labs was in fact using in its other EtO facilities in the United States and other countries, which resulted in EtO emissions from the Willowbrook facilities that were sometimes hundreds of times higher, and more dangerous, than those at Griffith Labs' other facilities;
- g. Failing to employ safe methods to adequately control, reduce, minimize, and/or mitigate EtO emissions from the facilities;
- h. Using EtO as part of its sterilization process when safer alternatives could accomplish the same or similar business purpose without presenting the same level of risk to human health and well-being;
- i. Conducting operations which exposed Plaintiffs, their decedents, and others to unsafe levels EtO and a heightened cancer risk;
- j. Emitting massive and unnecessary amounts of EtO into the air from the facilities;
- k. Failing to heed IEPA's warning that emissions into the Willowbrook community based on Griffith's operational design would be "several magnitudes higher than desirable";
- l. Failing to heed IEPA's advisement that steps "can be taken to minimize emissions in order to reduce the ambient impacts to an acceptable level";

- m. Failing to warn the Willowbrook community, including Plaintiffs, that the toxicity data reviewed by the IEPA and communicated to Griffith "provides evidence of human cancers of the pancreas, bladder, brain, central nervous system and stomach associated with EtO exposure";
- n. Failing to warn the Willowbrook community, including Plaintiffs, that "various animal studies have shown carcinogenic, mutagenic, leukogenic and teratogenic effects" of EtO exposure;
- o. Failing to warn its neighbors that they were in danger because of the Willowbrook facility's EtO emissions, even though Griffith Labs: (A) knew that the emissions threatened its neighbors' health and that its neighbors had no idea that EtO was even being emitted into their community, and (B) provided warnings to residents living near some of Griffith Labs' *other* EtO sterilization facilities outside of Illinois;
- p. Failing to warn or advise Plaintiffs, their decedents, and others who lived or worked near the facilities that they were being exposed to EtO;
- q. Failing to warn or advise Plaintiffs, their decedents, and others who lived or worked near the facilities that they were inhaling EtO;
- r. Failing to warn or advise Plaintiffs, their decedents, and others who lived or worked near the facilities that it was emitting a known carcinogen into the air from the facilities;
- s. Failing to test the air outside the Willowbrook facility (ambient air) to determine the concentrations of EtO that had been emitted from the facility and would be inhaled by Griffith Labs' neighbors, even though Griffith Labs was specifically required to conduct extensive ambient air testing in 1984-1986 as a special condition for its permit to operate the Willowbrook facility;
- t. Failing to adequately study and test the effect of its EtO emissions from the facilities on the quality of air;
- u. Failing to adequately study and test the effect of its EtO emissions from the facilities on the health and well-being of people who lived or worked near the facilities;

- v. Misleading the State's regulator, Illinois EPA, by, *inter alia*, failing to inform the agency as to what Griffith Labs knew about the dangers of EtO to human health; planning to emit more EtO from the Willowbrook facility than it had represented to induce IEPA into granting Griffith Labs the initial Willowbrook permit; failing to advise IEPA that it was not using the same caliber equipment and processes in Willowbrook that it was using at its other facilities; and reporting to IEPA EtO emissions from Willowbrook that were based on assumptions which Griffith Labs knew had no basis or were false;
- w. Failing to train its employees and failing to audit the Willowbrook facility to ensure that the facility's operations were not endangering its neighbors even though such training and auditing were Griffith Labs' responsibilities;
- x. Placing its own economic interests above the health and well-being of those who lived or worked near the facilities;
- y. Failing to provide the Operators with capital to invest in reasonable emission control systems even though such capital was available;
- z. Failing to provide the Operators with capital to invest in reasonable equipment upgrades and maintenance even though such capital was available;
- aa. Working independently and through an EtO industry lobbyist to improperly dispute conclusions concerning the health dangers of EtO that had been reached by independent scientists and health agencies with the purpose of understating those health dangers and ultimately creating a justification for emissions that endangered the health of those living near the Willowbrook (and other) sterilization facilities;
- bb. Emitting EtO, a known carcinogen, into the air from the facilities before fully studying, researching, or understanding the deleterious impact that EtO inhalation exposure has on the health, safety, and well-being of those in the surrounding area; and
- cc. deliberately concealing its knowledge concerning the deleterious impact that EtO inhalation exposure has on Plaintiffs, their decedents, and others who lived or worked near the facilities.

301. As a direct and proximate result of one or more of the foregoing acts or omissions, Plaintiffs and their decedents inhaled dangerous amounts of EtO and developed the diseases and conditions identified in their Short Form Complaints and, as a result, have been caused to incur and endure medical bills, lost wages, pain and suffering, mental anguish, disability, disfigurement, reduced life expectancy, loss of normal life, and death.

WHEREFORE Plaintiffs respectfully request that judgment be entered in their favor and against Griffith Foods International, Inc. in an amount to be determined by a trier of fact.

**COUNT 16**

**Ultrahazardous Activity / Strict Liability – Griffith Foods International, Inc. (Griffith Labs)**

302. Plaintiffs incorporate by reference all allegations contained herein.

303. The use and emission of EtO from the facilities constitutes an ultrahazardous activity.

304. The use and emission of EtO created a high degree of risk to Plaintiffs, their decedents, and others who lived or worked near the facilities such that the likelihood of cancer caused by its use and emission of EtO is as much as 64 times the level of acceptable risk.

305. The use and emission of EtO is especially inappropriate given the area in which it is located; namely, within a densely populated residential area.

306. While the activities conducted at the facilities are exceedingly dangerous, they offer little to no value to the surrounding community.

307. Griffith Labs is strictly liable for any injuries proximately resulting therefrom.

308. As a direct and proximate result of one or more of the foregoing acts or omissions, Plaintiffs and their decedents inhaled dangerous amounts of EtO and developed the diseases and conditions identified in their Short Form Complaints and, as a result, have been caused to incur and endure medical bills, lost wages, pain and suffering, mental anguish, disability, disfigurement, reduced life expectancy, loss of normal life, and death.

WHEREFORE Plaintiffs respectfully request that judgment be entered in their favor and against Griffith Foods International, Inc. in an amount to be determined by a trier of fact.

#### **COUNT 17**

##### **Civil Battery – Griffith Foods International, Inc. (Griffith Labs)**

309. Plaintiffs incorporate by reference all allegations contained herein.

310. At all relevant times, Griffith Labs knew that EtO emitted from the facilities would have a toxic, poisonous, and highly deleterious effect upon the health, safety, and well-being of persons inhaling it.

311. Notwithstanding this knowledge, Griffith Labs caused and/or set in motion events that caused EtO to come in contact with Plaintiffs and their decedents.

312. Plaintiffs and their decedents' contact with EtO was offensive and harmful.

313. Griffith Labs intentionally emitted EtO into the air despite its knowledge that it would contact people who lived or worked near the facilities.

314. Plaintiffs and their decedents did not consent to contact with EtO emitted from the facilities.



315. As a direct and proximate result of one or more of the foregoing acts or omissions, Plaintiffs and their decedents inhaled dangerous amounts of EtO and developed the diseases and conditions identified in their Short Form Complaints and, as a result, have been caused to incur and endure medical bills, lost wages, pain and suffering, mental anguish, disability, disfigurement, reduced life expectancy, loss of normal life, and death.

WHEREFORE Plaintiffs respectfully request that judgment be entered in their favor and against Griffith Foods International, Inc. in an amount to be determined by a trier of fact.

#### **COUNT 18**

##### **Public Nuisance – Griffith Foods International, Inc. (Griffith Labs)**

316. Plaintiffs incorporate by reference all allegations contained herein.

317. The general public has a common right to breathe in clean air without dangerous levels of carcinogens such as EtO. The Illinois Constitution guarantees these rights to its citizens. Article XI of the Illinois Constitution of 1970, Environment, Section 1, Public Policy - Legislative Responsibility, provides that:

The public policy of the State and the duty of each person is to provide and maintain a healthful environment for the benefit of this and future generations. The General Assembly shall provide by law for the implementation and enforcement of this public policy.

Article XI of the Illinois Constitution of 1970, Environment, Section 2, Rights of Individuals, provides that:

Each person has the right to a healthful environment. Each person may enforce this right against any party, governmental or private, through appropriate legal proceedings subject to reasonable limitation and regulation as the General Assembly may provide by law.

318. The activities of Griffith Labs as described above unreasonably infringed upon and/or transgressed this public right by causing those who lived and worked in the area surrounding the facilities to inhale high levels of EtO on a routine and constant basis, and further, to be exposed to air causing a substantially elevated risk of cancer.

319. Griffith Labs' use and emission of EtO is especially inappropriate given the area in which it is located; namely, within a densely populated residential area.

320. As a direct and proximate result of one or more of the foregoing acts or omissions, Plaintiffs and their decedents inhaled dangerous amounts of EtO and developed the diseases and conditions identified in their Short Form Complaints and, as a result, have been caused to incur and endure medical bills, lost wages, pain and suffering, mental anguish, disability, disfigurement, reduced life expectancy, loss of normal life, and death.

WHEREFORE Plaintiffs respectfully request that judgment be entered in their favor and against Griffith Foods International, Inc. in an amount to be determined by a trier of fact.

#### **COUNT 19**

##### **In Concert Liability – Griffith Foods International, Inc. (Griffith Labs)**

321. Plaintiffs incorporate by reference all allegations contained herein.

322. Illinois law has adopted section 876 of the Restatement (Second) of Torts, entitled "Persons Acting In Concert," which holds liable persons who act "in concert" with another tortfeasor to cause harm. *E.g., Woods v. Cole*, 181 Ill.2d 512 (1998).

323. Specifically, for harm resulting to a third person for the tortious conduct of another, one is subject to liability if he (a) does a tortious act in concert with the other or pursuant

to a common design with him, or (b) knows that the other's conduct constitutes a breach of duty and gives substantial assistance or encouragement to the other to so conduct himself, or (c) gives substantial assistance to the other in accomplishing a tortious result and his own conduct, separately considered, constitutes a breach of duty to the third person.

324. The activities of Griffith Labs as described above, including those occurring subsequent to its October 1984 asset transfer to Micro-Biotrol Company: (a) were done in concert with the operators of the Willowbrook facility or pursuant to a common design with the operators, namely, to operate an ethylene oxide sterilization facility in a residential community with insufficient pollution controls and without warning to the community; (b) gave substantial assistance or encouragement to the Willowbrook facility operators knowing that such operators were breaching duties to Plaintiffs; and (c) gave substantial assistance to the Willowbrook facility operators to accomplish such tortious result and, when separately considered, Griffith Labs' conduct constituted an independent breach of duty to Plaintiffs.

325. As a direct and proximate result of one or more of the foregoing acts or omissions, Plaintiffs and their decedents inhaled dangerous amounts of EtO and developed the diseases and conditions identified in their Short Form Complaints and, as a result, have been caused to incur and endure medical bills, lost wages, pain and suffering, mental anguish, disability, disfigurement, reduced life expectancy, loss of normal life, and death.

WHEREFORE Plaintiffs respectfully request that judgment be entered in their favor and against Griffith Foods International, Inc. in an amount to be determined by a trier of fact.

**COUNT 20**  
**Negligence – Bob Novak**

326. Plaintiffs incorporate by reference all allegations contained herein.

327. Beginning in August 2003, Mr. Novak was the Operations Manager at the Willowbrook facilities.

328. In that capacity, Mr. Novak was responsible for the operation of the facilities, coordinating and overseeing all activities in facility operations, which included testing and analysis to determine the nature and extent of EtO emissions.

329. At all relevant times, Mr. Novak had a duty to exercise ordinary care for the health, safety, and well-being of Plaintiffs, their decedents, and others who lived and worked in the area surrounding the facilities.

330. At all relevant times, Mr. Novak knew or should have known that the EtO emitted from the facilities would have a toxic, poisonous, and highly deleterious effect upon the health, safety, and well-being of persons inhaling it.

331. Mr. Novak breached his duty and failed to exercise ordinary care in one or more of the following ways:

- a. by permitting chamber doors to remain open during and/or after the sterilization process and thereby allowing dangerous amounts of EtO to escape the chamber area in the facilities;
- b. by permitting products that have been sterilized and are still off-gassing to be placed and stored in areas without pollution control and/or adequate ventilation system in the facilities;

- c. by allowing at least six chambers to run at the same time and thereby overloading the vacuum system such that pollution control for one or more chambers was inoperable and/or ineffective in the facilities;
- d. by allowing exterior doors to remain open for unreasonable lengths of time in the facilities;
- e. by failing to timely order and/or replace filters for the dry system and thereby allowing excess amounts of EtO emissions therefrom in the facilities;
- f. by failing to properly monitor EtO emissions and/or document EtO emissions resulting in an inaccurate report on pollution relating to the facilities;
- g. by failing to employ safe methods to adequately control, reduce, minimize, and/or mitigate EtO emissions from the facilities;
- h. by permitting emissions of excessive, unnecessary, and/or dangerous volumes of EtO into air from the facilities;
- i. by subjecting Plaintiffs, their decedents, and others who lived and worked near the facilities to an elevated cancer risk;
- j. by failing to warn or advise Plaintiffs, their decedents, and others who lived and worked in the Willowbrook area that they were being exposed to EtO notwithstanding his knowledge that EtO is toxic, poisonous, and causes adverse medical issues including, but not limited to, cancer; and
- k. by failing to warn or advise Plaintiffs, their decedents, and others who lived and worked in the Willowbrook area that they were inhaling EtO notwithstanding his knowledge that EtO is toxic, poisonous, and causes adverse medical issues including, but not limited to, cancer.

332. As a direct and proximate result of one or more of the foregoing acts or omissions, Plaintiffs and their decedents inhaled dangerous amounts of EtO and developed the diseases and conditions identified in their Short Form Complaints and, as a result, have been caused to incur

and endure medical bills, lost wages, pain and suffering, mental anguish, disability, disfigurement, reduced life expectancy, loss of normal life, and death.

WHEREFORE Plaintiffs respectfully request that judgment be entered in their favor and against Bob Novak in an amount to be determined by a trier of fact.

**COUNT 21**  
**Willful and Wanton Conduct – Bob Novak**

333. Plaintiffs incorporate by reference all allegations contained herein.

334. At all relevant times, Mr. Novak had a duty to refrain from willful and wanton conduct and/or conduct that exhibits an utter indifference and/or conscious disregard to the health, safety, and well-being of Plaintiffs, their decedents, and others who lived and worked in the area surrounding the facilities.

335. At all relevant times, Mr. Novak knew that EtO emitting from the facilities would have a toxic, poisonous, and highly deleterious effect upon the health, safety, and well-being of persons inhaling it.

336. Mr. Novak breached his duty and was guilty of willful and wanton conduct in one or more of the following ways:

- a. by approving test results and/or monitoring systems which provided misleading and inaccurate report on pollution relating to the facilities;
- b. by permitting emissions of massive and unnecessary amounts of EtO into the air from the Facility notwithstanding his knowledge that EtO is toxic, poisonous, and causes adverse medical issues including, but not limited to, cancer;
- c. by failing to warn or advise Plaintiffs, their decedents, and others who lived and worked in the Willowbrook area that they were being exposed

to EtO notwithstanding his knowledge that EtO is toxic, poisonous, and causes adverse medical issues including, but not limited to, cancer;

- d. by failing to warn or advise Plaintiffs, their decedents, and others who lived and worked in the Willowbrook area that they were inhaling EtO notwithstanding his knowledge that EtO is toxic, poisonous, and causes adverse medical issues including, but not limited to, cancer;
- e. by deliberately concealing his knowledge concerning the deleterious impact that EtO inhalation exposure has on people who lived or worked near the facilities; and
- f. by subjecting Plaintiffs, their decedents, and others who lived and worked near the facilities to an elevated cancer risk without warning them of the same.

337. As a direct and proximate result of one or more of the foregoing acts or omissions, Plaintiffs and their decedents inhaled dangerous amounts of EtO and developed the diseases and conditions identified in their Short Form Complaints and, as a result, have been caused to incur and endure medical bills, lost wages, pain and suffering, mental anguish, disability, disfigurement, reduced life expectancy, loss of normal life, and death.

WHEREFORE Plaintiffs respectfully request that judgment be entered in their favor and against Bob Novak in an amount to be determined by a trier of fact.

**COUNT 22**  
**Negligence – Roger Clark**

338. Plaintiffs incorporate by reference all allegations contained herein.

339. Mr. Clark was the Maintenance Supervisor at the Willowbrook facilities from the late 1980s until approximately 2015.

340. In that capacity, Mr. Clark was responsible for calibrating the internal EtO monitors and overseeing the sterilization process at the facilities.

341. At all relevant times, Mr. Clark had a duty to exercise ordinary care for the health, safety, and well-being of Plaintiffs, their decedents, and others who lived and worked in the area surrounding the facilities.

342. At all relevant times, Mr. Clark knew or should have known that the EtO emitting from the facilities would have a toxic, poisonous, and highly deleterious effect upon the health, safety, and well-being of persons inhaling it.

343. Mr. Clark breached his duty and failed to exercise ordinary care in one or more of the following ways:

- a. by inaccurately calibrating and/or manipulating internal EtO monitors to allow for erroneous monitoring results and excessive levels of EtO in the facilities;
- b. by failing to properly monitor EtO emissions and/or document EtO emissions resulting in an inaccurate report on pollution relating to the facilities;
- c. by permitting chamber doors to remain open during and/or after the sterilization process and thereby allowing dangerous amounts of EtO to escape the chamber area in the facilities;
- d. by permitting products that have been sterilized and are still off-gassing to be placed and stored in areas without pollution control and/or adequate ventilation system in the facilities;
- e. by allowing at least six chambers to run at the same time and thereby overloading the vacuum system such that pollution control for one or more chambers was inoperable and/or ineffective in the facilities;